IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 24906 of 2007(M)

PETITIONER:

ELAMBILAT AGENCIES
KAPPAD, KANNUR -670 006,
KERALA,REPRESENTED BY ITS PROPRIETOR
SRI K.C. DAWOOD.

BY ADV. SRI.A.M.SHAFFIQUE

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, TAXES DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.**

3. **ASSISTANT COMMISSIONER (ASSESSMENT) SPECIAL CIRCLE, KANNUR.**

4. **THE DY. COMMISSIONER (APPEALS) KOZHIKODE.**

5. **THE SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE.**

BY GOVERNMENT PLEADER (SHRI TEKCHAND V.)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21 / 08 / 2007, THE COURT ON 21/08/2007 DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 24906 OF 2007 M

Dated this the 21st August, 2007

JUDGMENT

Petitioner challenges Ext.P5 to the extent that the petitioner was called upon to pay a sum of Rs.5 Lakhs within one month from 18.7.2007 as a condition for granting stay. According to the petitioner, petitioner has established a clear prima facie case for grant of absolute stay. According to petitioner, whatever-else may have been the position prior to Ext.P4, after the issuance of Ext.P4 dated 10.5.2007 by which the Government has exempted tax under sub-section (2) of Section 5 of the Kerala General Sales Tax Act, 1963 by dealers on the turnover of sale of edible oil sold under their brand name, after purchasing them from manufacturers in the State who enjoy sales tax exemption under the Notification, the Appeal of the petitioner is only to be allowed. Petitioner, of course, challenges Rule 32(13B) of the KGST Rules. After having heard the learned Government Pleader for Taxes, I feel that in

the totality of the circumstances, Ext.P5 is to be modified and it is ordered that interim stay is granted of proceedings against the petitioner on condition that the petitioner pays Rs.2.5 Lakhs (Rupees Two Lakhs & Fifty Thousand) within a period of three weeks from today. The Tribunal will dispose of the Appeal as early as possible, naturally after the deposit of Rs.2.5 Lakhs as aforesaid.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

kbk.